

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE IMPLEMENTATION)	ORDER ISSUING
OF THE FEDERAL COMMUNICATIONS)	PROTECTIVE ORDER;
COMMISSION'S TRIENNIAL REVIEW ORDER)	ORDER ISSUING
REGARDING UNBUNDLING OBLIGATIONS)	DISCOVERY REQUESTS
)	TC03-181

On August 21, 2003, the Federal Communications Commission (FCC) released its Triennial Review Order. Memorandum Opinion and Order, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket Nos. 01-338, 96-98, 98-147. In its Triennial Review Order, the FCC directed the state commissions to make certain determinations regarding the unbundling obligations of incumbent local exchange carriers. The FCC required the state commissions to make these determinations within nine months from the effective date of the Order.

The Commission has jurisdiction over this matter pursuant to SDCL chapter 49-31, specifically 49-31-3, 49-31-7, 49-31-7.1, 49-31-7.3, 49-31-7.4, 49-31-11, 49-31-15, 49-31-17, 49-31-38, 49-31-38.1, and 49-31-81.

In accordance with the FCC's order, the Public Utilities Commission (Commission) requested that any person or entity that intended to present evidence challenging the FCC's findings of impairment regarding access to loops, dedicated transport, or local circuit switching for mass market customers file a notice of such intent on or before October 10, 2003. In addition, the Commission requested written comments regarding recommendations on how the Commission should proceed.

The Commission received comments from Qwest Corporation (Qwest), AT&T Communications of the Midwest (AT&T), MCI metro Access Transmission Services LLC and MCI WorldCom Communications Inc. (collectively MCI), the South Dakota Telecommunications Association (SDTA), Midcontinent Communications (Midcontinent), and McLeodUSA Telecommunications Services, Inc. (McLeodUSA). None of these entities indicated an intent to present evidence challenging the FCC's findings of impairment regarding access to loops or dedicated transport. With respect to local circuit switching serving mass market customers, Qwest stated that it intends to challenge the FCC's finding of impairment for this network element. Qwest further stated that no proceedings were needed at this time regarding the impairment findings for dedicated transport and loops.

At its October 16, 2003, meeting, the Commission decided to conduct a granular fact-based analysis regarding local circuit switching serving mass market customers in areas served by Qwest. The Commission set an intervention deadline of October 31, 2003, and the hearing was set for April 26 through April 30 and May 3 through May 7, 2004. The Commission also requested comments on various issues.

The Commission received petitions to intervene and comments from Qwest, AT&T, MCI, SDTA, Midcontinent, and McLeodUSA. In addition to the petitions to intervene and

comments, the Commission received a Joint Motion for Adoption of Batch Hot Cut Forum filed by Qwest, AT&T, and MCI. The Joint Motion proposed "a multi-state forum with participation by both industry (ILECs and CLECs) as well as State Commission personnel and other interested persons." The first forum would be held in Denver, Colorado, with the option for participation via a conference bridge. Subsequent meetings would be held in Seattle, Washington and Phoenix, Arizona, if needed. All discussions would be transcribed and made part of the record in each state's triennial review proceeding. Impasse issues remaining at the conclusion of the forum process would be documented and then litigated before each state commission. Given the strict timelines set forth by the FCC for the development of a batch hot cut process, the following schedule was proposed:

November 5, 2003 - Commission notice to all CLECs within the state regarding a batch hot cut forum;

November 11, 2003 - Qwest submits a detailed batch hot cut proposal;

November 18, 2003 - CLECs submit comments/counter proposals to Qwest's batch hot cut proposal;

December 1-3, 2003 - Initial Forum held in Denver, Colorado;

December 4, 2003 through January 15, 2004 - Weekly conference calls if useful and meetings, if necessary, in Seattle, Washington and Phoenix, Arizona;

January 20, 2004 - Simultaneous filing of direct testimony on impasse issues regarding the batch hot cut process and filing of a stipulation among parties on areas of agreement/consensus items;

February 15, 2004 - Simultaneous filing of rebuttal testimony;

Hearings and Commission decision will be as determined in each state's procedural order.

In addition to the Joint Motion, some of the parties also submitted a proposed Protective Order.

At its November 4, 2003, meeting, the Commission considered a number of issues regarding this docket. The Commission voted to grant intervention to Qwest, AT&T, MCI, SDTA, Midcontinent, and McLeodUSA. After hearing no objection from any party, the Commission voted to grant the Joint Motion for Adoption of Batch Hot Cut Forum. The Commission also slightly modified the notice requirement by sending the order on November 6, 2003, to all telecommunications carriers in the state who have requested to receive notice of Commission proceedings.

With regard to the Protective Order, the Commission requested modifications and, subject to those modifications being made, voted to allow the issuance of a Protective Order. On the issue of discovery, the Commission noted that it was considering issuing discovery requests based on the discovery questions formulated by the Regional Oversight Committee (ROC) discovery group. Qwest stated that it would file a list of the entities that Qwest would like bench discovery requests issued to.

The issue of how to deal with confidential information submitted by non-parties pursuant to the bench discovery requests was also discussed. AT&T noted that in the Minnesota proceeding, discovery responses were assigned a number in order to conceal the name of the responding entity. The Commission voted to allow the issuance of bench discovery requests. The Commission then allowed additional comments on who the bench discovery requests should be sent to and how confidential information should be handled, especially with respect to any non-parties. These optional comments were required to be filed on or before November 12, 2003.

On November 12, 2003, the Commission received a list of CLECs that Qwest proposed discovery be served upon. On November 13, 2003, the Commission received an amended list of facilities-based CLECs from Qwest. On November 12, 2003, the Commission received comments from MCI. On November 19, 2003, the Commission received the amended Protective Order. Further revisions were made to the Protective Order.

The Commission finds that the amended Protective Order is needed to facilitate the disclosure of documents and information and to protect confidential information. Pursuant to its November 6, 2003, order, the Commission issues the Protective Order which is attached to this order.

Pursuant to its November 6, 2003, order authorizing the issuance of discovery requests, the Commission issues discovery requests based on the discovery questions formulated by the ROC discovery group. The discovery requests are attached to this order.

With respect to the issue of which entities the discovery should be served upon, the Commission allowed any party to file a proposed list of entities. Qwest, in its amended list, requested that the discovery requests be sent to the following companies: AT&T, Black Hills FiberCom, L.L.C., Dakota Telecom, ICG Telecom Group, Inc., McLeodUSA, Midcontinent Communications, Northern Valley Communications, Sprint, PrairieWave Communications, and Midstate Telecom, Inc. However, the Commission notes that Dakota Telecom no longer exists and the PrairieWave CLEC is PrairieWave Telecommunications, Inc., not PrairieWave Communications. Thus, the Commission will amend Qwest's list to exclude Dakota Telecom and change PrairieWave Communications to PrairieWave Telecommunications, Inc. The only other party submitting a list was MCI who requested that the discovery requests be sent to all certified LECs in South Dakota and to equipment manufacturers, where necessary. The Commission finds that, at this time, it will send its bench discovery requests to Qwest, all parties who have been granted intervention in this docket, and the companies specified by Qwest as amended by the Commission.

On the issue of confidentiality, MCI stated in its comments that with the issuance of the Protective Order, concealment of the identity of the responding entities is not necessary and could be "counterproductive to the necessary understanding of the status of the market required for the Commission and the parties to take positions and make decisions." MCI further noted that any attempt to conceal the responding entities may turn out to be unproductive because, if enough information is eventually provided, the identity of the responding entity will probably become apparent anyway. No other entity commented on this issue.

The Commission finds that it will not attempt to conceal the identity of the responding entities but will rely on the Protective Order to prevent the disclosure or dissemination of confidential information in a manner that would competitively disadvantage any responding entity. The Commission notes that the Protective Order includes provisions for submission of confidential and highly confidential information.

It is therefore

ORDERED, that the Protective Order, attached to this order, is issued for this docket; and it is

FURTHER ORDERED, that the discovery requests, attached to this order, are issued to the following entities: Qwest, MCI, AT&T, Black Hills FiberCom, ICG Telecom Group, Inc., McLeodUSA, Midcontinent Communications, Northern Valley Communications, Sprint, PrairieWave Telecommunications, Inc., and Midstate Telecom, Inc.; and it is

FURTHER ORDERED, that each of the above-listed entities shall answer the discovery requests on or before December 19, 2003, by filing them with the Commission.

Dated at Pierre, South Dakota, this 26th day of November, 2003.

<p style="text-align: center;">CERTIFICATE OF SERVICE</p> <p>The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.</p> <p>By: _____</p> <p>Date: _____</p> <p style="text-align: center;">(OFFICIAL SEAL)</p>

BY ORDER OF THE COMMISSION:

ROBERT K. SAHR, Chairman

GARY HANSON, Commissioner

JAMES A. BURG, Commissioner